

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

JUL 28 1983

Dear Applicant:

Your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code has been considered.

The information submitted discloses that you were incorporated on [REDACTED], under the non-profit laws of the State of [REDACTED].

You are organized for the purpose of acquiring, managing, constructing, improving, operating and lessing a nursing home and other health care facilities, and for civic and charitable purposes.

Your Articles state that upon dissolution of the corporation or the winding up of its affairs, the assets of the corporation shall be distributed exclusively to [REDACTED], [REDACTED], their heirs, designees or assigns.

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable,...or educational purposes,...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

Initiator

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"(b)(1)(i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

"(b)(4) Distribution of assets on dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local government, for a public purpose, or would be distributed by court to another organization to be used in such manner as in the judgement of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, managed, or administered, by such private interests."

[REDACTED]

You do not meet the organizational test since your purposes are broader than those allowed by section 501(c)(3) of the Code and your assets are not dedicated to an exempt purpose.

You are a successor to a "for profit" organization, [REDACTED], [REDACTED]. According to the sales agreement, [REDACTED], [REDACTED] transferred all assets and liabilities on [REDACTED] to you. [REDACTED] are the only stockholders in both corporations.

[REDACTED], is the only new operating policy initiated as a result of the transfer of assets from a profit-making entity to you.

Transferring of assets and liabilities from a "for-profit" to a "non-profit" organization does not necessarily change the nature of the organization. [REDACTED] are still the owners and primary operators of [REDACTED]. Since all assets will be transferred to [REDACTED], their heirs, designees, or assigns, you are still operating, ultimately, for their benefit.

In addition, your activities include the operation of a trade or business. A trade or business is defined as any activity carried on for the production of income from the sale of goods or the performance of service. Carrying on a trade or business for profit refers to the kind of trade or business ordinarily carried on for profit regardless of whether a particular organization operates the trade or business in a manner designed to return only operational costs or a profit.

Because of the dedication of assets to your founders and the fact that you are operating a nursing home in a manner which is not distinguishable from one operated as a for-profit entity, we have determined that you do not meet the operational test described in section 501(c)(3).

Based on the above information, we conclude that you are not exempt from federal income tax. You are required to file income tax returns on Form 990.

If you have questions or do not wish to file a written protest, you may return Form 6018 in the enclosed self-addressed envelope to the IRS.

If you wish to protest our conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and equity in support of your position. If you desire an oral protest, you must indicate this in your protest. The enclosed Publication 6018 gives instructions for filing a protest.

[REDACTED]

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely yours,

[REDACTED]
District Director

Enclosures
Publication 392
Form 1120
Form 6013